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Energy Concepts, Inc. and Sheet Metal Workers' International Association, Local Union No. 19.
Cases 4-CA-32928, 4-CA-32929, and 4-CA-32930

July 30, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by the Union on March 24 and May 20, 2004, respectively, the General Counsel issued the consolidated complaint on May 20, 2004 against Energy Concepts, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On July 9, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On July 13, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by June 3, 2004, all the allegations in the consolidated complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated June 29, 2004, notified the Respondent that unless an answer was received by July 6, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with a facility in Bensalem, Pennsylvania, has been engaged in performing heating, ventilation, and air conditioning installation and related services. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania, and performed services valued in excess of \$50,000 outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Sheet Metal Workers' International Association, Local Union No. 19 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions with the Respondent set forth opposite their respective names, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

John Swain	- General Manager
Ronald Musser, Jr.	- Chief Executive Officer
Bill Eberhart	- Supervisor

On about March 17, 2004, the Respondent, by Bill Eberhart, via a Nextel communication, threatened to discharge employees who attended a Union meeting.

On or about March 17, 2004, the Respondent, by John Swain, at the Respondent's facility, threatened to discharge employees who were involved with the Union.

On or about March 17, 2004, the Respondent discharged its employees Armando Taglianetti and Matthew Heiple.

On or about March 18, 2004, the Respondent discharged its employee Kevin Burger.

The Respondent discharged these three employees because they supported the Union.

CONCLUSION OF LAW

By threatening to discharge employees who attended a union meeting or who were involved with the Union, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in

Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

By discharging employees Kevin Burger, Matthew Heiple, and Armando Taglianetti, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Kevin Burger, Matthew Heiple, and Armando Taglianetti, we shall order the Respondent to offer the discriminatees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharges of Burger, Heiple, and Taglianetti, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Energy Concepts, Inc., Bensalem, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees who attend a union meeting or who are involved with Sheet Metal Workers' International Association, Local Union No. 19, or any other union.

(b) Discharging employees because they support a union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Kevin Burger, Matthew Heiple, and Armando Taglianetti full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Kevin Burger, Matthew Heiple, and Armando Taglianetti for any loss of earnings and other benefits resulting from their unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Kevin Burger, Matthew Heiple, and Armando Taglianetti, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bensalem, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 17, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2004

Peter C. Schaumber ,	Member
Dennis P. Walsh,	Member
Roanld Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten to discharge employees who attend a union meeting or who are involved with Sheet Metal Workers' International Association, Local Union No. 19, or any other union.

WE WILL NOT discharge employees because they support a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Kevin Burger, Matthew Heiple, and Armando Taglianetti full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Kevin Burger, Matthew Heiple, and Armando Taglianetti for any loss of earnings and other benefits resulting from their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharges of Kevin Burger, Matthew Heiple, and Armando Taglianetti, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ENERGY CONCEPTS, INC.